

KARLA E. PAINTER
Assistant U.S. Attorney
U.S. Attorney's Office
P.O. Box 8329
Missoula, MT 59807
105 E. Pine, 2d Floor
Missoula, MT 59802
Phone: (406) 542-8851
FAX: (406) 542-1476
E-mail: Karla.Painter@usdoj.gov

ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

UNITED STATES OF AMERICA,

CR-21-51-M-DLC

Plaintiff,

OFFER OF PROOF

vs.

LASSANA DIABY,

Defendant.

THE CHARGES

Defendant Lassana Diaby has filed a plea agreement that contemplates his plea of guilty to the sole count in the indictment which charges theft of mail by

officer or employee in violation of 18 U.S.C. § 1709. His guilty plea is unconditional.

The United States presented all formal plea offers in writing. The plea agreement entered by the parties and filed with the Court, in the government's view, represents the most favorable offer extended to the defendant. *See Missouri v. Frye*, 132 S.C. 1399 (2012)

Elements. To prove the case against Diaby at trial, the United States would have to establish the following elements beyond a reasonable doubt:

First, the defendant was a Postal Service employee;

Second, gift cards and cash contained within a mailed item came into the defendant's possession for the purpose of being conveyed by mail;

Third, the defendant stole with the intent to convert to his own use, the gift cards and cash contained within the mailed item.

Proof. If called upon to prove this case at trial, and to provide a factual basis for Diaby's plea, the United States would present the following evidence:

On March 26, 2021, a United States Postal Service customer reported items were stolen from a birthday card sent to his locking mailbox in Missoula, Montana. The sender confirmed she mailed the card containing a \$200 gift card to Costco, two \$100 gift cards to Amazon, and \$40 cash. She reported she sent the item on March 20, 2021, from Whitefish, Montana.

Based on the purchase receipt for the gift card, Costco provided information

on its redemption showing Lassan Diaby presented his membership card and the gift card to complete a purchase at the Costco in Missoula, Montana. Video footage of the transaction depicts a male who appears to be Diaby completing the transaction and providing his receipt to a Costco employee at the exit.

At the time, Diaby worked for the United States Postal Service as a Mail Processing Clerk at the Processing and Distribution Center in Missoula. Diaby's time and attendance records reflect he completed night shifts on March 20-23 and spent several hours in the manual letter sorting section.

The government submits that this evidence would prove beyond a reasonable doubt all the elements of the crime charge in the indictment.

Respectfully submitted this 24th day of January, 2022.

LEIF M. JOHNSON
United States Attorney

/s/ Karla E. Painter
KARLA E. PAINTER
Assistant U.S. Attorney
Attorney for Plaintiff